

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.4590 of 2006

Narayan Damodar Nirgude

Petitioner

Vs.

Shri Hitendra Ratansi Shah

Respondent

Mr.Surel S. Shah for petitioner.

Mr.Rajiv Patil i/b. Ms.Bhavana V. Jadhav &
Mr.Dushyant Purekar for respondent.

CORAM: B.H.MARLAPALLE, J.

May 03, 2007.

P.C.

1. Heard Mr.Shah, the learned counsel for the petitioner and Mr.Patil, the learned counsel for the respondent. Admittedly the petitioner is the landlord and the respondent is tenant and Regular Civil Suit No.1035 of 2001 filed by the petitioner against the respondent for possession of the suit shop has been decreed on 10/1/2002. However, the petitioner's son and wife have thereafter filed Regular Civil Suit No.193 of 2002 sometimes in March 2002 and challenged the compromise decree dated 10/1/2002 as being a fraud played on the Court. In the said suit the petitioner is impleaded as defendant no.1 and the respondent is impleaded as the defendant no.2. It appears that inspite of the

notice in the said suit and also a copy of the ex-parte order passed in that proceeding, the respondent did not deem it appropriate to go on depositing the monthly compensation amount as per the compromise decree. Consequently, the petitioner - landlord instituted Special Darkhast No.28 of 2004 after giving notice and in the said Darkhast proceedings the respondent filed an application at Exhibit 19 praying for certain issues to be decided and more particularly whether the compromise decree could be executable. The said application has been allowed by the impugned order dated 29/3/2006 passed by the learned Civil Judge, Senior Division at Solapur.

2. In the affidavit-in-reply filed by the respondent, a copy of the plaint in RCS No.193 of 2002 has been brought on record and the main relief prayed for therein is for setting aside the compromise decree dated 10/1/2002 in Regular Civil Suit No.1035 of 2001.

3. In these obtaining circumstances, the execution proceedings cannot continue any further and more so when the respondent is refrained from

carrying out any repairs etc. The refusal of the respondent to comply with the terms of the compromise decree cannot be said to be unjustified. At the same time as the respondent is in possession and in use of the suit premises, he will have to continue to pay the monthly consideration agreed upon in the compromise terms and deposit the same with the trial Court in Regular Civil Suit No.193 of 2002 provided he is allowed to undertake the repairs as may be required from time to time.

4. Hence the writ petition is disposed off in terms of the following directions:

(a) Regular Civil Suit No.193 of 2002 is directed to be heard and decided on its own merits as expeditiously as possible and preferably by 31st October 2007.

(b) Proceedings in Special Darkhast No.28 of 2004 shall stand suspended till Regular Civil Suit No.193 of 2002 is finally decided.

(c) The present respondent shall continue to deposit the monthly consideration amount as per the

compromise decree with the lower Court dealing with the trial of Regular Civil Suit No.193 of 2002.

(d) The present respondent will be at liberty to undertake tenantable repairs as may be necessary from time to time till the said suit is decided.

(e) The deposited amount will not be withdrawn either by the plaintiffs or by the present petitioner and the said amount shall be subject to the final outcome in the suit.

(f) The order passed by the Courts below in Regular Civil Suit No.193 of 2002 as well as Special Darkhast No.28 of 2004 shall stand modified in terms of the above directions.

(B.H.MARL